

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

District of _____

Division _____

Case No. _____

(to be filled in by the Clerk's Office)

Shane Phillip Nicholson

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint.

If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

State of Montana
Flathead County Attorney's Office
Caitlin Overland, Travis Ahner, Lori Adams
Ed Corrigan, Flathead County Sheriff's
Office, Montana State Crime Lab, Jamie Brown
Danly Interdante

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

All other names by which
you have been known:

ID Number

Current Institution

Address

Shane Phillip Nickerson
3004447
Montana State Prison
700 Conley Lake P.d.
Deer Lodge MT 59722
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Job or Title (*if known*)

Shield Number

Employer

Address

Lori Adams (Former Flathead County
City Judge attorney
City Court Judge
Hatspell MT 59901
City State Zip Code

☒ Individual capacity☒ Official capacity**Defendant No. 2**

Name

Job or Title (*if known*)

Shield Number

Employer

Address

Ed Corrigan
Retired County Attorney
Hatspell MT 59901
City State Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 3

Name
Job or Title (if known)
Shield Number
Employer
Address

Caitline Overland
Flathead County Attorney
State of Montana
Kalispell MT 59901
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name
Job or Title (if known)
Shield Number
Employer
Address

Travis Ayers
Flathead County Attorney
Kalispell
City State Zip Code
☒ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Violation to Constitutional rights 1st, 5th, 6th,
8th, and 14th amendments

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

NA

Defendant No: 5

Name Jamie Bray Montana State Crime Lab

Employer Montana State Crime Lab

Missoula MT 59808
City State Zip
☒ Individual Capacity ☒ Official Capacity

Defendant No: 6

Name Flathead County Sheriff's Office

Employer City of Kalispell / State

Kalispell MT 59901
City State Zip
☒ Official Capacity

Defendant No: 7

Name The Daily Interlake

Employer News Paper / City of Kalispell
Kalispell MT 59901
City State Zip
☒ Individual Capacity ☒ Official Capacity

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

*In jail before trial, during trial, post trial
There are several incidents in the jail record,
and prison records*

Statement of Claim 4-A p.g.
Lori Adams and Ed Corrigan who worked for the Flathead County Attorney's Office basically maliciously prosecuted me explained on D, and violated several constitutional protections during the process of my criminal case, trial and even post trial. The inflammatory information to the press on all occasions has violated several constitutional protections. These defendants violated the federal Multiple Charges Statute and my double jeopardy protections, but also deprived me of my constitutional rights to a fair trial on several factors. These malicious charges and inflammatory coverage of my case to several news agencies, has led me to be targeted by ~~my~~ inmates, correctional staff or my right to be free from cruel and unusual punishment. This has also put my family in danger at times or targeted. I've been assaulted several times, threatened, targeted, mentally tormented, even attempted suicide several times because of the abuse due to defendants constitutional violations. My case is also on the Cexus Nexus tablets in prison which puts me at risk as well.

ON 11-2019 4-A f.g.
Defendants Caitlin Overland and
Travis Almer failed to assist me
in my claim of Seeking post-conviction
access to biological testing, to help
prove actual innocence. Defendants
also failed to dismiss a couple
charges violation of due process
and my double jeopardy protection.
(Sexual assault conviction and Criminal
endangerment conviction) My aggravated
assault conviction - I was trying to get
a new and fair trial for it.

Defendant Flathead County Sheriff's
Office has violated my Several Constitutional
protections by not charging witness Mari
Hines, researching or analyzing Mari Hines
toxicology reports, investigating the victims
Medical history of bloody stools. Failure of
investigating all evidence collected for
DNA analysis, Failure of investigating
events of abuse and neglect from
Mari Hines. ~~For~~ Harassment of my brother
Roger Nicholson during trial in front of
jurors. Inflaming the media of
my case and character, causing
severe issues of my incarceration
in prison and issues with my
family.

Defendant
Montana State Crim Lab 4-A p.g.
tech Jamie Bray analyzed 7 of 32
exhibits, but County Attorney Cori Adams
had communication with Jamie Bray.
I believe in a circumstantial case
Jamie Bray knew of potential exculpatory
testing and withheld that information.
This is why County Attorney objected
in trial on the record when conversations
of Cori Adams and Jamie Bray was
brought up during trial. All in all this
violated several protected statutes and
Constitutional violation.

Defendant The Daily Interlake made
extreme inflammatory reports of my
case/character and presented false
facts to the public. All of this still
has an extreme deal to my safety
in prison and severe effects to my
mental health. This has also led my
family to have to sell their property
in Marion, MT. (All articles of me or my
case was false and misleading)

§5-D
Motion this Court for 'Discovery'
Freedom of information act

From Defendants: Daily Interlake
All news articles of my case or any
article that relates to me.

From: Montana State Prison
All incident reports and Confidential
reports in regards to me, all Medical
reports and all Mental Health reports
in regards to me. This is all cause
to prove what dates and times and
records to establish all events in
relation to the damages I suffered and
~~the~~ issues over my conviction or duration
of confinement.

From: Montana State Crime Lab
All of amounts of evidence never analyzed
and evidence collected.

I will produce exhibits from my trial
transcripts to prove alot of claims here,
this other evidence is important to support
my claims as I have no way of gathering
it. I seek this Court to order this
discovery. Montana State Prison is not
a defendant but has viable documents
and records to support my argument.

P. 5-D

D. The Flathead County Attorney's Office
 Lori Adams and Ed Corrigan violated
 all Constitutional protections on B.
 by not researching the victims medical
 history of bloody stools, and inflaming
 the Media of a heinous allegation
 without fully analyzing all exculpatory
 Solaks taken off me or fully analyzing
 other cumulated amounts of evidence.
 Only analyzing 7 of 32 exhibits taken.
 Then violating many of my Constitutional
 protections on B by advancing in differ.
 theories not charged in my information,
 and using a cumulated amount of
 hearsay from a their Material
 witness who was intoxicated while
 testifying. This Material witness
 should have been the suspect or
 co-defendant.

Flathead County Sheriff's Office
 violated my Constitutional protections
 on B, by not investigating the
 victims medical history, evidence of abuse
 and neglect from Mari Hines. All DNA
 evidence, detaining my brother in front
 of jurors outside the courtroom during
 my trial (putting a bad light of my family as a
 jury influence) aiding in inflaming the
 media of my case/character

Montana State Crime Lab - P.S-D
only analyzed 7 of 32 exhibits and
her and Lori Adams were in communication
during the DNA analysis, and I believe
need of exculpatory information or
analysis.

Daily Interlake - Inflaming my
Case and Character - this created a
unfair trial, and put my family in
danger at times. This all put me
in severe danger in prison and I
still have ongoing issues with inmates
and Correctional staff over this.

- C. What date and approximate time did the events giving rise to your claim(s) occur?
*before trial 8-11-08, during - 10-2009 post trial
 Feb-2010 - Nov 2019 and my whole stay or
 events of abuse while incarcerated over my
 conviction*
- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)
*All Constitutional violations 1st 5th 6th 8th and 14th
 before trial, during trial, post trial, incarceration etc.*

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I sustained losses of liberties, including Severe Mental health issues, been assaulted or threatened several times over all this. Most of all this is documented in incident reports, Medical reports, and mental health records. I did receive some treatment over all this but limited - all is in the prison records.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I seek biological testing such as a full examination of all swabs taken off me, a depth testing and testing of my body oils and the victims body oils. Also testing of Mar. Hines. Blood for Methamphetamine, testing for exculpatory evidence like blankets and other evidence never tested. Osborne v. DA's office, 423 F.3d 1050. I seek actual minimal \$200-1500 a day and all 12 years incarcerated and \$300,000 dollars due to my family selling their property over all of this. A 1983 claim can demonstrate the invalidity of confinement or its duration.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?
- ☒ Yes *N/A*
- ☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Montana State Prison / N/A

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?
- ☒ Yes
- ☐ No
- ☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?
- ☐ Yes
- ☐ No
- ☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☐ Yes

☐ No

N/A

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

N/A

- E. If you did file a grievance:

1. Where did you file the grievance?

N/A

2. What did you claim in your grievance?

N/A

3. What was the result, if any?

N/A

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

N/A

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

N/A

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s)

Defendant(s)

Post Conviction Relief
State of Montana

2. Court (if federal court, name the district; if state court, name the county and State)

Flathead County District Court / Montana Supreme Court

3. Docket or index number

DA 20-0129

4. Name of Judge assigned to your case

Montana Supreme Court

5. Approximate date of filing lawsuit

March 2nd 2020

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition.

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Pending* Post Conviction is civil

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Only PCR civil petition in state court

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) _____

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

N/A

If no, give the approximate date of disposition

N/A

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

8-16-20

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Shane Phillip Nickerson
Shane Phillip Nickerson
3004447
780 Conley Lake Rd
Deer Lodge *MT* *59722*
City State Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address